

## VDH Drinking Water Funding Program Guidance Package #4

### PROCUREMENT

#### I. General

The Recipient's procurement system must be structured to promote free and open competition to the maximum extent possible. It is the Recipient's responsibility to ensure that it receives the required product at the best price and to avoid all unnecessary purchases and expenditures. The Recipient's procurement procedures should also promote, to the maximum extent possible, the use of minority-owned and women-owned businesses. The Recipient must take positive steps to seek out qualified minority-owned and women-owned businesses to directly solicit, or otherwise bring them into the bidding process.

All procurement made during the course of planning, design and construction of the project must be purchased, acquired or contracted for in accordance with Chapter 43, Title 2.2-4300, Code of Virginia, and known as the Virginia Public Procurement Act (Act) and Code of Federal Regulations Title 40 Part 31.36.

This program requires all participants to follow the provisions of the Virginia Public Procurement Act as revised by the 2005 General Assembly Session **with no exceptions recognized for localities under 3,500 in population.**

#### II. Definitions

**Recipient** – Eligible water system receiving financial assistance.

**Prime Contractor** – A business concern that enters into written agreements directly with Recipient. **The term prime contractor** includes agreements to provide services (such as engineering and legal), supplies, equipment and construction.

**Subcontractor** – A business concern that enters into written agreement directly with the Prime Contractor. Subcontractor includes agreements to provide services (such as engineering and legal), supplies, equipment and construction.

**Minority-Owned Business Enterprise (MBE)** - A business concern with at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals.

**Woman-Owned Business Enterprise (WBE)** - A business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the

equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals.

**Small Business Enterprise (SBE)** - An independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

### **III. MBE/WBE**

#### **A. Six (6) Affirmative Steps**

The Code of Federal Regulations Title 40 Part 31.36(e), “Procurement,” requires the Recipient and Prime Contractor to take all necessary affirmative steps to assure that minority-owned and women-owned businesses are afforded contracting opportunities. **This requirement applies to all contracts, subcontracts and procurements for services (including Engineering and legal), supplies equipment, and construction.** The goal is to make MBE/WBE firms aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. To achieve this goal, the affirmative steps, otherwise known as “six good faith efforts,” that must be followed are:

1. Include qualified small and minority businesses and women’s business enterprises on solicitation lists;
2. Ensure that small and minority and women’s businesses are solicited whenever they are potential sources of products or services to be bid;
3. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority and women’s businesses (i.e. provide alternative bidding scenarios);
4. Establish delivery schedules to encourage participation by small and minority and women businesses (i.e. timing and flexibility);
5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency, U.S. Department of Commerce; and
6. Require the Prime Contractor to take affirmative steps as outlined in items one through five above to subcontract with small and minority and women’s businesses, if they award subcontracts.

#### **B. “Good Faith” Effort Compliance Documentation**

The Recipient and Prime Contractors must provide documentation to support a “good faith” effort in the solicitation of MBE and WBE firms only. **A Prime Contractor is a business concern that enters into written agreement directly with the Recipient and includes agreements to provide services (engineering and legal), supplies, equipment and construction.** The submission of documentation to support a “good faith” effort in

the solicitation of Small Business Enterprise is not required; however, the Recipient and Prime Contractors must maintain this documentation in their files for possible future reference. Documentation may include the following:

1. Copies of announcements/postings in newspapers or other media for specific contracting/subcontracting opportunities. Include language in announcements/postings that MBE/WBE firms are encouraged to bid.
2. Copies of announcements/postings of contracting/subcontracting opportunities in trade publications or minority media that target MBE and/or WBE firms.
3. Documentation of sources used to identify potential MBE/WBE firms.
4. Documentation of contacts with MBE/WBE firms, including the firm name, address, telephone number dates of phone calls, letters and the contract results.
5. Copies of direct solicitation letters sent to all MBE/WBE firms.
6. Copies of the MBE/WBE certification documentation for ALL proposed prime and subcontractor MBE/WBE firms.
7. Documentation showing Prime Contractor has made the six good faith efforts to seek qualified MBE/WBE subcontracts - to the extent they use subcontractors.

**Attachment 1** - MBE/WBE Compliance Checklist has been developed to assist in documenting compliance with MBE/WBE requirements and must be submitted to VDH.

### **C. Additional Guidance on Conducting Outreach**

#### **1. Possible sources for identifying MBE/WBE firms:**

- (a). Virginia's Department of Minority Business's website.

<http://www.dmbe.state.va.us>

- <http://www.dmbe.state.va.us/vendors.htm> At Department of Minority Business's website click on "Certified Vendors" tab.

#### **EXAMPLES:**

- A search for vendors with commodity code 92500 – Engineering Services and 92533 – Engineer Services, Professional yields a list of registered firms.
- A search for vendors with commodity code 91874 – Legal Consulting and 96149 – Legal Services, Attorney yields a list of registered firms.
- A search for vendors with commodity code 91356 – Construction, Utility/Underground Projects and 91360 Construction, Water System, Main and Service Line yields of list of registered firms.
- <http://www.dmbe.state.va.us/HPC%20DBE%20DIRECTORY.pdf> At Department of Minority Business's website click on "VDOT DBE Directory" for alphabetically list of construction related registered firms.

- (b). Virginia's Department of Transportation's website.  
[http://www.virginiadot.org/default\\_flash.asp](http://www.virginiadot.org/default_flash.asp)
  - [http://www.virginiadot.org/business/bu\\_bizDev.asp](http://www.virginiadot.org/business/bu_bizDev.asp) At the Virginia Department of Transportation's website click on "Certified DBE Vendors List."
- (c). Federal Government's federal contracts database known as Central Contractor Registry (CCR). [www.ccr.gov](http://www.ccr.gov) CCR is the primary vendor database for the federal government. Both current and potential government vendors must register in CCR in order to be awarded federal government contracts.

These various searches yield a list of potentially qualified MBW/WBE businesses. From these lists, identify those businesses in your area to directly solicit. Solicit businesses that you would reasonably expect to respond and submit a quote.

To ensure the Recipient is given credit for good-faith outreach efforts, the Recipient documents the searches executed and the results of the searches, describes criteria used to determine who on the list(s) to directly solicit (probably area code or distance) and describes any other resources used to seek qualified MBE/WBE firms to solicit.

The Recipient must give a copy of this outreach guidance (PG #4) to Prime Contractors because they are likewise required to make good faith outreach efforts when searching for MBE/WBE subcontractors. Prime Contractors are also required to document their outreach efforts just as project owners are.

**2. Possible minority publications to consider when advertising (when it is believed that advertisement may increase MBE/WBE participation :**

Alexandria, Virginia	Metro Herald	(703) 548-8891
Alexandria, Virginia	Omaid Weekly	(703) 922-6321
Annandale, Virginia	Latino Impacto	(703) 847-0810
Arlington, Virginia	El Tiempo Latino	(703) 527-7860
Centreville, Virginia	Asian Fortune	(703) 968-0202
Falls Church, Virginia	Pho Nho Vietnamese	(703) 533-0264
Fredericksburg, Virginia	LaConexion	(540) 368-5055
Hampton Roads, Virginia	Hampton Roads Voice	(757) 244-5654
Harrisonburg, Virginia	Shenandoah Valley Hit	(540) 432-0416
Harrisonburg, Virginia	Nuevas Raices	(540) 271-0799
Norfolk, Virginia	Norfolk New Journal and Guide	(757) 543-6531
Richmond, Virginia	Richmond Free Press	(804) 644-0496
Richmond, Virginia	Richmond Voice	(804) 644-5617
Roanoke, Virginia	Roanoke Tribune	(540) 343-0336

#### **D. MBE/WBE Fair Share Goals**

It is a federal requirement that MBE and WBE firms be provided the opportunity to participate in contract awards for projects. EPA requires that VDH establish MBE and WBE fair share percentage goals for four procurement categories to include: supplies, equipment, services, and construction. A fair share does not constitute an absolute goal, but a commitment on the part of the Recipient and Prime Contractor to attempt to use MBE/WBE firms by carrying out the six affirmative steps. Recipients and Prime Contractors are not required to award contracts to MBE/WBE firms. However, Recipients and Prime Contractors must document good faith efforts to afford MBE/WBE firms the opportunity for contract award.

The Recipient is required to monitor and maintain records regarding the Recipient's and Prime Contractor's efforts to meet and fulfill our affirmative action fair share goals. The Recipient must discuss at pre-bid conference and incorporate into the bid package contract specifications the: **Attachment 2** - Instruction to Bidders/Offerors: MBE/WBE Requirements of 40 CFR 33.240; **Attachment 3** - Bidder Compliance Statement/Certification Regarding Equal Employment Opportunity, and **Attachment 4** - Subpart Inserts containing 8 mandatory inserts (Subpart A-H). The VDH will provide the Recipient with its fair share goals to be included in Subpart C of the Contract Inserts prior to solicitation of bids.

Upon receipt of bids, the Recipient shall ascertain submittal of apparent low bidder's documentation to support his or her efforts in the solicitation and recruitment of MBE/WBE contractors, subcontractors, and/or equipment suppliers, etc. The Recipient must evaluate the low bidder's good faith efforts regarding MBE/WBE solicitation prior to contract award.

All MBE/WBE solicitation and recruitment documentation must be submitted for VDH approval along with the bid documents. The MBE/WBE compliance checklist will be part of and will aid in submittals.

**Immediately** following contract award, the Recipient shall complete and submit to VDH **Attachment 5 - MBE/WBE Utilization Reporting Form** identifying the selection, if any, of minority and female-owned businesses to be utilized during construction of the facility.

The Recipient is also required to submit the **MBE/WBE Utilization Report Form** on a **quarterly** basis during the construction period. In addition, the **Prime Contractor** must submit its MBE/WBE Utilization Report Form firms to the Recipient on a quarterly basis during the construction period utilizing Attachment 5. The Recipient must compile these MBE/WBE Utilization Reports and submit them by the 15<sup>th</sup> of the month following the end of each fiscal quarter to VDH at the following address:

**VDH Office of Drinking Water  
109 Governor Street, 6<sup>th</sup> Floor  
Richmond, Virginia 23219**

#### **IV. Methods of Procurement**

Competitive sealed bidding or competitive negotiation may be used for the purchase or lease of equipment, supplies, services, and construction, under public contract. Professional services may be procured by competitive negotiation. Competitive negotiation may be used for procurement of other than professional services when it has been determined, and documented in writing, that competitive sealed bidding is not practical or advantageous to the public. The procedures for these and other eligible procurement methods are discussed below.

##### **Competitive Sealed Bids**

Procurement under this method includes the following procedures or steps. A formal public announcement is made that sealed bids will be received for the specified work, or a solicitation for bids is placed in newspapers and publications with wide distribution. The announcement should be published at least 30 days prior to the bid opening so that the project receives maximum exposure to potential contractors. Potential qualified MBE/WBE firms must be identified and directly solicited.

All bids must be opened at the same time and all non-responsive bids should be rejected immediately. A responsive bidder is one whose bid has followed all requirements of the bidding document specifications, and is one who can provide documentation to support good faith efforts to solicit MBE/WBE participation. Bids are then evaluated in accordance with criteria established by the Recipient in the bid document to determine the lowest, responsive, responsible bidder. A responsible bidder is one who has the financial and technical resources to perform the scope-of-work. Further, a responsible bidder has a satisfactory performance record, is willing to comply with federal labor requirements and standards, and has an adequate accounting system to document compliance.

Once the bids and bidders have been evaluated and the lowest, responsive, responsible contractor has been determined, the contract can be awarded. Award of the contract will also follow the method described in the contract documents. Award of the contract cannot be made to a contractor who has been debarred and/or suspended from bidding on any federal or state funded project. The contractor is required to take the first five affirmative steps outlined above.

##### **Competitive Negotiation**

Procedures for this type of procurement require posting of a public notice and an advertisement in a newspaper of general circulation. The notice and advertisement must identify the needed services and request that proposals be submitted. It should be published so that it receives wide circulation and appears at least 30 days prior to the deadline for receiving proposals. The notice will include the scope of services; the method by which documents associated with the services

can be obtained or examined; the criteria to be used to evaluate each proposal; and the deadline and place for submitting the proposals. Contact VDH for approval to publish the advertisement for less than 30 days prior to the deadline for receiving proposals. Potential qualified MBE/WBE firms must be identified and directly solicited.

Once the proposals are received, they are to be evaluated uniformly in accordance with criteria established in the notice to determine the qualified offerors and acceptable proposals. The Recipient then determines the list of the best qualified firms, and negotiation with these firms begin. Negotiations are to be conducted in a manner that does not identify or disclose any information regarding competing firms. Once a proposal is determined to be the most advantageous to the Recipient, considering price and evaluation criteria, the contract can be awarded.

### **Noncompetitive Negotiation**

Award of a contract or subagreement under noncompetitive negotiation methods may occur only when an item is available from a single source, a public emergency exists requiring immediate action, or after solicitation from a number of sources, competition is determined to be inadequate. A written determination by the public body shall document the availability of only the sole source or emergency situation. Authorization from VDH must be obtained for procurement through noncompetitive negotiation.

### **Small Purchases**

Section 2.2-4303(G) of the Act allows for the establishment of purchase procedures, if adopted in writing, not requiring competitive sealed bids for competitive negotiation for single or term contracts for **goods and services, other than professional services** if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchases procedures must provide for competition whenever practicable. Purchases under this subsection that are expected to exceed \$30,000 require the written informal solicitation of a minimum of four bidders or offerors. Purchases under this subsection that are expected to be less than \$30,000 require the written informal solicitation of a minimum of three bidders or offerors.

Section 2.2-4303 (H) of the Act allows for establishment of purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for **professional services** in the aggregate or the sum of all phases in not expected to exceed \$30,000; however, such small purchase procedures shall provide competition wherever practicable. Purchases under this subsection that are expected to exceed \$30,000 require the solicitation of a minimum of three firms/offerors. Solicitation for quotes must include qualified MBE/WBE firms.

Documentation of the procedures followed in small purchases procurement must be kept by the Recipient. **Attachment 6** - Small Purchases has been developed to assist with documentation and to be submitted to VDH.

## **Cost and Price Consideration**

In competitive negotiation, cost is one of the evaluation factors used in the selection process. Detailed cost data should be obtained from the firms involved in the negotiation process. Pricing should be evaluated based on the complexity of the work and the prices charged in the surrounding geographical area.

The two types of costing/pricing which are typically preferred for service type contracts are *Fixed Price* or *Lump Sum*, and *Cost Plus Fixed Fee*. The fixed price arrangements are used when the scope-of-work can be clearly defined and a fixed price or lump sum cost can be negotiated. Under this type of subagreement, the final cost cannot be changed unless a formal change in the scope of the work is negotiated.

The cost plus fixed fee pricing arrangement is used when it is difficult to define accurately the complete scope-of-work. Under this type of subagreement, a cost ceiling or upper limit is established along with a fixed fee or profit for the work. If costs increase for additional work within the original scope-of-work, the contractor does not receive any increase in the fixed fee.

The acceptable methods of obtaining the cost for construction services are "Unit Price" bids and "Lump Sum" bids. In lump sum bidding, the entire scope-of- work is grouped together as a single item and the contractor provides a price which will accomplish the entire scope. In unit price bidding, each individual task or item is broken out by linear feet, cubic yards, etc., and a cost is given per unit specified, along with the total cost of all units required for the task identified.

### **V. Reporting Requirements**

A. Prior to the award of construction contracts, the Recipient will be able to determine if an increase or decrease is needed for the funding commitments to reflect the actual project costs. The Recipient shall provide for VDH's approval copies of the following information and documents:

- The updated or "as-bid" costs for all tasks/elements involved with the project. This budgeting summary should include, and break out individually, the construction cost, equipment cost, fees for inspection and engineering services, etc., which will require outlay during the construction of the project.
- Evidence of bid advertisement/announcement/postings [See **Attachment 7** for Generic Language]
- The Bid Form(s) or Bid Proposal(s).
- The Bid Tabulation(s).
- Anticipated construction start date.
- Identification and direct solicitation of MBE/WBE firms
- Attachment #1 – MBE/WBE Compliance Checklist
- All bonds (*bid, payment, and performance*).



B. For procurement of professional services other than construction contracts, (*i.e.*, *architectural/engineering*) the Recipient will submit for VDH's approval the following information.

- Proof of date RFP or RFQ was issued (copy of advertisement/announcement/posting [see Attachment 7 for General language])
- Identification and direct solicitation of MBE/WBE firms
- Attachment #1 – MBE/WBE Compliance Checklist
- Copy of executed contract
- Copy of evaluation criteria used
- Ranking of respondents
- Statement detailing with whom negotiations were conducted

C. All documentation and support information concerning the procurement of service and goods shall be retained in the Recipient's project files and will be available for inspection by VDH or their authorized agent.

## **VI. Nondiscrimination Provisions**

The Recipient shall maintain records of all executed nondiscrimination (EEO compliance) certifications filed.

## CONTRACT INSERTS

**The Recipient is to fully explain all of the 12 items at the pre-bid conference.**

Copies of the Contract Inserts (the following 12 items) that must be incorporated verbatim in all construction and service contracts, as applicable, are as follows:

1. Attachment No. 1 – MBE/WBE Checklist.
2. Attachment No. 2 – Instruction to Bidders/Offerors.
3. Attachment No. 3 – Certification regarding EEO compliance.
4. Attachment No. 4 – “Subparts” (8 inserts).
  - a. Subpart A - containing the Federal/State Nondiscrimination Provisions for Equal Employment Opportunities applicable to all construction and service contracts.
  - b. Subpart B - containing the notice to the prime contractor relative to certification on nonsegregational facilities.
  - c. Subpart C - setting forth the affirmative action requirements for the contractors and subcontractors for work involving any construction trade in excess of \$10,000.
  - d. Subpart D - containing the Civil Rights Act of 1964.
  - e. Subpart E - setting forth requirements of Age Discrimination Act of 1975, Rehabilitation Act of 1973.
  - f. Subpart F – setting forth requirements under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act for contracts and subcontracts in excess of \$100,000.
  - g. Subpart G - Procurement of goods and materials from Small Businesses in Rural Areas of the Commonwealth of Virginia whenever practical and feasible.
  - h. Subpart H – Provides that a contractor or subcontractor maintains a drug-free workplace during the performance of contract duties for any water revolving loan-assisted project.
5. Attachment No. 5 - MBE/WBE Utilization Report (Revised 2/3/06).

**Virginia Department of Health  
Drinking Water Funding  
MBE/WBE Compliance Checklist**

**Name of Recipient/Prime Contractor:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_ **Project Number:** \_\_\_\_\_

**Check Procurement Type: (Check applicable box)**

- ☐ **Services – Engineering**
- ☐ **Services – Legal**
- ☐ **Construction Contractor (Prime)**
- ☐ **Construction Contractor (Subcontract)**
- ☐ **Supplies**
- ☐ **Equipment**

In order to be in compliance with federal procurement requirements, funding recipients and contractors are obligated to make reasonable efforts, otherwise known as “good faith efforts,” to solicit Minority-Owned Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) in their procurement methods.

The goal of this good faith effort is to increase contracting opportunities for MBE/WBE firms. It is not sufficient to just have a competitive bidding process that is open to MBE/WBE firms. Funding recipients and contractors must seek out qualified MBE/WBE firms.

Recipients are required to include provisions in their bid documents and take affirmative steps to solicit MBE/WBE firm participation in procuring services, supplies, equipment, and in awarding construction contract.

The successful prime contractor must also seek MBE/WBE firm participation in obtaining subcontracts for construction work, equipment, services, and supplies **prior to bid submittal**.

Demonstration of good faith efforts must be documented. This checklist is designed to facilitate and document compliance with “good faith efforts” and **must be** submitted to VDH **prior to contract award**. Failure to comply with MBE/WBE procurement requirements will result in the recipient incurring costs that are ineligible for reimbursement from our Program.

Please check boxes where activities are completed and provide documentation; explain unchecked boxes in comments below and use additional pages if necessary:

- ☐ Certified Affidavit of Publication of Newspaper advertisement soliciting MBE/WBE participation. (Suggested advertisement language: Minority Owned Businesses (MBEs) and Women Owned Businesses (WBEs) are encouraged to respond.)

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- ☐ Your advertisements from publications that target MBE/WBE firms. (Only consider when it is believed that this advertisement may increase MBE/WBE participation.)

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- ☐ Obtain current lists of MBE/WBE firms. (Documentation must be on file and available for examination. Don't forward lists to VDH.) Possible resources include:  
<http://www.dmbv.virginia.gov/vendors.htm>,  
<http://www.dmbv.state.va.us/HPC%20DBE%20DIRECTORY.pdf>,  
[http://www.virginiadot.org/business/bu\\_bizDev.asp](http://www.virginiadot.org/business/bu_bizDev.asp) and <http://www.ccr.gov>.

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- ☐ List sources used to identify MBE/WBE firms:

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- ☐ Identify potential MBE/WBE firms for direct solicitation.

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- ☐ Directly solicit MBE/WBE firms. Provide list of MBE/WBE firms solicited and solicitation letters sent to all MBE/WBE firms. (Solicit those MBE/WBE firms that you would reasonably expect to respond and submit a quote.)

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- ☐ Description of contacts (i.e. telephone calls) and dates of contacts with MBE/WBE firms.

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- ☐ Perform and submit analysis to identify portions of work that can be divided and performed by qualified MBE/WBE firms. (Reduced contract size/quantities when economically feasible to permit maximum participation of MBE/WBE firms.)

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- ☐ Copies of MBE/WBE firm certification for all proposed prime and subcontractor MBE/WBE firms.

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Successful bidders/offerors should take reasonable affirmative steps to subcontract with MBE and WBE firms whenever additional subcontracting opportunities arise during the performance of the contract.

Comments:

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**Recipient/Contractor's Signature**

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**Date**

## **Instruction to Bidders/Offerors**

### **Minority Business and Women's Business Enterprise (MBE/WBE) Requirements of 40 CFR 33.240**

**In order to be in compliance with federal procurement requirements, funding recipients and contractors are obligated to make reasonable efforts, otherwise known as "good faith efforts," to solicit Minority-Owned Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) in their procurement methods. The Bidder/Offeror is responsible for the completing the following as part of bid submission:**

#### Bidder/Offeror Responsibilities

- A. Affirmative Steps: Activities during preparation of bids and offers.  
Bidders/Offerors shall take affirmative steps in compliance with the regulations, prior to submission of bids or closing date for receipt of initial offers, to encourage participation in projects by MBE's and WBE's. Such efforts include:
  - 1. Establish and maintain a current solicitation list of minority and female recruitment sources, and assure MBE's and WBE's are solicited once they are identified.
  - 2. When feasible, segmenting total work requirements to permit maximum MBE/WBE participation and establish delivery schedules to encourage MBE/WBE participation.
  - 3. Assuring that MBE's and WBE's are solicited whenever they are potential sources of goods and services. This step may include:
    - a. Sending letters or making other personal contact with MBE's, WBE's, private agencies and state associations (e.g., those whose names appear on lists prepared by EPA or the recipient and other MBE/WBE known to the bidder/offeror). MBE's and WBE's should be contacted when other potential subcontractors are contacted, within reasonable time prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:
      - (i) Specific description of the work to be contracted;
      - (ii) How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;

- (iii) Date the quotation is due to the bidder/offeror;
  - (iv) Name, address, and phone number of the person in the bidder/offeror's firm whom the prospective MBE/WBE subcontractor should contact for additional information.
- b. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprises of the U.S. Department of Commerce.
- B. Bidders/offerors must demonstrate compliance with MBE/WBE requirements to be deemed responsible. Demonstration of compliance may include the following information; however the recipient may specify other methods of demonstrating compliance:
  - 1. Names, addresses and phone numbers of MBE/WBE's expected to perform work;
  - 2. Work to be performed by the MBE's and WBE's;
  - 3. Aggregate dollar amount of work to be performed by MBE's and WBE's, showing aggregate to MBE's and aggregate to WBE's separately;
  - 4. Description of contacts to MBE and WBE organizations, agencies and associations which service MBE's/WBE's, including names of organizations, agencies and associations and dates of contacts;
  - 5. Descriptions of contacts to MBE's and WBE's, including number of contacts, fields (i.e., equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.
- C. Successful bidders/offerors should take reasonable affirmative steps to subcontract with MBE's and WBE's whenever additional subcontracting opportunities arise during the performance of the contract.

**Failure to comply with the submission of appropriate MBE/WBE documentation may result in the determination of a bidder as nonresponsible and shall be cause for the bid to be rejected.**

**BIDDER COMPLIANCE STATEMENT/CERTIFICATION  
REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

Applicability: Bid exceeding ten thousand dollars for construction contract/subcontract of unlimited amount and non-construction contract/subcontract of less than one million dollars.

This statement relates to a proposed (contract between \_\_\_\_\_ and Public Body) or  
(subcontract between \_\_\_\_\_ and \_\_\_\_\_) to be  
(subcontractor) (contractor)  
funded under a federally assisted project. Pursuant to Executive Order 11246 and its implementing regulations at 41 CFR 60-1.7 (b) (1), as the undersigned bidder. I certify that:

- 1) Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  
\_\_\_\_\_ Yes \_\_\_\_\_ No
- 2) Bidder has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR 60-2 (applies only to non-construction contractor).  
\_\_\_\_\_ Yes \_\_\_\_\_ No
- 3) Bidder has filed with the Joint Reporting Committee, the Director (Office of Federal Contract Compliance Programs, U.S. Department of Labor), and agency, or the Equal Employment Opportunity Commission, all reports due under the applicable filing requirements.  
\_\_\_\_\_ Yes \_\_\_\_\_ No

I understand that if I have failed to file any compliance reports which have been required of me, or have failed to develop and have on file at each establishment affirmative action programs pursuant to 41 CFR 60-2, when required, I am not eligible to have my bid or proposal considered, or to enter into the proposed contract.

I further understand that if awarded the proposed contract, and the contract for the FIRST time brings me under the filing requirements or the written affirmative action programs that I will, as applicable: (a) within 30 days file with the Public Body Standard Form 100 (EEO-1); and (b) within 120 days from the commencement of the contract develop and submit to the Director of OFCCP for approval a Written Affirmative Action Plan.

NAME AND ADDRESS OF BIDDER (Include ZIP Code):

NAME AND TITLE OF SIGNER (Please Type):

SIGNATURE:

DATE:

**SUBPART A**

**EQUAL EMPLOYMENT OPPORTUNITY**

1. Executive Order 11246 (Contracts/subcontracts above \$10,000)

(a) During the performance of this contract, the contractor and all subcontractors agree as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or an other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.



(6) In the event of the contractors' noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be

declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **SUBPART B**

### **NOTICE TO PRIME CONTRACTOR OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES**

Bidders and offerors are cautioned as follows: By signing this bid or offer, the bidder or offeror will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this solicitation. The certification provides that the bidder or offeror does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that he will not maintain such segregated facilities.

## **SUBPART C**

### **CONSTRUCTION CONTRACTORS AFFIRMATIVE ACTION REQUIREMENTS**

1. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the affirmative action goals for minority and women participation and which is set forth in the solicitations from which this contract resulted.

The applicable Minority Business Enterprise (MBE)/Women's Business Enterprise (WBE) "fair share" goals and dollar objectives are established as follows:

	<u>MBE%</u>	<u>WBE%</u>
Construction	2.6	1.5
Equipment	0.3	1.7
Services	1.9	0.8
Supplies	0.8	0.6

3. The MBE/WBE goals set forth in this contract are shown in #2 above. The Contractor shall make every reasonable attempt to achieve the goals as stated. When so notified by the Recipient, the apparent low bidder shall provide a listing of MBE's and WBE's he proposes to use on this project. Should the bidder fail to meet the aforementioned objectives he shall provide complete documentation which demonstrates the positive efforts made. Failure to satisfy this requirement to the satisfaction of the Recipient shall constitute a nonresponsible bid and shall be cause for the owner to reject the bid.

4. The contractor shall implement the specific affirmative action steps as provided in the Special Notice under the Instructions to Bidders section of these specifications.

5. The Contractor and all Subcontractors must perform and document good faith efforts to solicit MBE/WBE firms in the procurement for services, supplies, equipment, and construction. With bid submittal, the contractor must furnish to the Recipient all pertinent documentation which evidences or documents a good faith effort in MBE/WBE solicitations and projected utilization. **Failure to comply with the submission of appropriate MBE/WBE documentation may result in the determination of a bidder as nonresponsible and shall be cause for the bid to be rejected.**

6. Immediately following the award of contracts and continuing through the construction stage, all records of MBE/WBE utilization shall be maintained and reported in accordance with the Virginia Department of Health MBE/WBE Utilization Reporting Form. A MBE/WBE Utilization Reporting Form shall be completed and submitted during the construction period to the Recipient by the 15<sup>th</sup> of the month following the end of the previous quarter.

## **SUBPART D**

### **CIVIL RIGHTS ACT OF 1964**

The Contractor and any subcontractors shall not, on the grounds of race, color, or national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination, any person under any program or activity receiving federal financial assistance.

## **SUBPART E**

### **REHABILITATION ACT OF 1973; PL 93-112, AND AGE DISCRIMINATION ACT OF 1975**

The Contractor and any subcontractors shall not on the grounds of race, color, national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination any person under any program or activity funded in whole or in part with Federal funds. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

## **SUBPART F**

### **COMPLIANCE WITH SECTION 306 OF THE CLEAN AIR ACT AND SECTION 508 OF THE CLEAN WATER ACT**

#### **(CONTRACTS AND SUBCONTRACTS IN EXCESS OF \$100,000)**

The Contractor agrees that:

1. Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
2. The Contractor and Subcontractors will comply with all requirements of Section 306 of the Clean Air Act, as amended, and Section 508 of the Clean Water Act, as amended, and all regulations and guidelines issued thereunder.
3. The Contractor will promptly notify the loan Recipient and the Virginia Department of Health of any notification received from the Director of the Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

## **SUBPART G**

### **UTILIZATION OF SMALL BUSINESSES IN RURAL AREAS**

The contractor and its subcontractors shall maintain a small business solicitation list and make appropriate attempts to procure needed equipment, supplies and material from small businesses in rural areas of the Commonwealth of Virginia whenever they are a practical source for solicitation.

## **SUBPART H**

### **SECTION 11-51.1, to CHAPTER 417 RELATING TO THE PROCUREMENT PRACTICES OF ALL PUBLIC BODIES**

For every contract over \$10,000 the contractor must maintain a drug-free workplace. During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**THE VIRGINIA PUBLIC PROCUREMENT ACT (the "Act")**  
**PROCUREMENT REQUIREMENTS FOR SMALL PURCHASES**

The Drinking Water Revolving Fund Program and Water Supply Assistance Grant Fund Program require all recipients to follow the provisions of the Act. **Section 2.2-4303 (G) of the Act** allows for the establishment of purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts **for goods and services other than professional services** if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchases procedures must provide for competition wherever practicable. Purchases under this subsection that are expected to exceed \$30,000 require the written informal solicitation of a minimum of four bidders or offerors. **Section 2.2-4303 (H) of the Act** allows for the establishment of purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$30,000; however, such small purchase procedures shall provide competition wherever practicable. Completion and signing of this document acknowledges adoption and compliance with the Act and following conforming procedures. **Complete Parts A and B below for procurement of goods and services other than professional services. Complete Parts A and C below for procurement of professional services.**

**A. Project Name and Number:** \_\_\_\_\_

Name and Address of Bidder/  
Offeror Selected: \_\_\_\_\_

Amount of Contract: \_\_\_\_\_

(Attach copy of contract)

Date of Contract: \_\_\_\_\_

Describe goods or services to be provided: \_\_\_\_\_

**B. Section 2.2-4303 (G) of the Act: Contracts for goods and services other than professional services:**

List bidders/offerors (written informal solicitation of a minimum of four bidders/offerors required if purchases are expected to exceed \$30,000; informal solicitation of a minimum of three bidders/offerors if purchases are expected to be less than \$30,000). Also indicate price quoted, date contacted, method of solicitation (e.g., written informal letter describing goods or services to be purchased with bid request or informal solicitation via telephone), and whether a response was given to the solicitation. It is noted that the Act requires that you solicit bidders/offerors; the Act does not require that you receive a response to your solicitation. Attach copies of price information received, if available.

	<u>Bidder/Offeror</u>	<u>Price</u>	<u>Date Contacted</u>	<u>Method of Solicitation</u>	<u>Response? (Yes/No)</u>
1)	_____				
2)	_____				
3)	_____				
4)	_____				

**C. Section 2.2-4303 (H) of the Act: Contracts for professional services (e.g. engineering, test wells, source water studies etc.)**

a) List a minimum of three firms/offerors solicited. The Act does not require that you receive a response to your solicitation.

	<u>Firm/Offeror</u>	<u>Date Contacted</u>	<u>Method Of Solicitation</u>	<u>Response? (Yes/No)</u>
1)	_____			
2)	_____			
3)	_____			

b) Indicate at least three criteria (other than cost) considered in your selection of the firm/offeror (e.g., knowledge of waterworks, past record of performance at your waterworks, experience of key persons assigned to the project, etc.).

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

General Language for  
Advertisements/Announcements/Postings

---

1. Legal services.

<ENTITY>

REQUEST FOR QUALIFICATIONS STATEMENTS  
FOR LEGAL SERVICES

The <Entity> is seeking legal services for (describe generally the type of project). These services include (briefly describe the nature of the services).

Please submit your proposal of services and a statement of qualifications for these proposed services to the <Official Representative>. Proposals must be received no later than 4:00 p.m., <date>, to be considered. The <Entity> reserves the right to negotiate with any and all individuals or firms submitting proposals, in accordance with 40 CFR 31.36. (See 40 CFR 31.36 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_02/40cfr31\\_02.html](http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr31_02.html))

The <Entity> is an Affirmative Action/Equal Opportunity Employer. Small, minority, and women-owned firms are encouraged to submit proposals.

<Official Representative>

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2. Construction.

**Required Language in Advertisement for Bids**

MBE/WBE firms are encouraged to submit bids. Bidders must comply with the following: the Presidents's Executive Order # 11246 prohibiting discrimination in employment regarding race, color, creed, sex, or national origin; the President's Executive Orders # 12138 and 11625 regarding utilization of MBE/WBE firms; and the Civil Rights Act of 1964. Bidders must certify that they do not or will not maintain or provide for their employees any facilities that are segregated on the basis of race, color, creed, or national origin.

###

**VIRGINIA DRINKING WATER FUNDING  
MBE/WBE UTILIZATION REPORTING**

Mail or fax completed form to:  
VDH Office of Drinking Water  
109 Governor Street, 6<sup>th</sup> Floor  
Richmond, Virginia 23219  
Reporting Contact: Mary Guthrie  
(804) 864-7505  
Fax: (804) 864-7521

**PART I.**

A. Year \_\_\_\_\_

Reporting Quarter (Check One)

1<sup>st</sup> (Oct.-Dec.) \_\_\_\_\_ due Jan. 15th  
3<sup>rd</sup> (Apr.-Jun.) \_\_\_\_\_ due Jul. 15th

2<sup>nd</sup> (Jan.-Mar.) \_\_\_\_\_ due Apr. 15th  
4<sup>th</sup> (Jul.-Sept.) \_\_\_\_\_ due Oct. 15th

B. Name of Recipient: \_\_\_\_\_

Recipient Project No. and/or Name: \_\_\_\_\_

C. Prime Contractor: \_\_\_\_\_

Is your company a MBE firm? Yes \_\_\_\_\_ No \_\_\_\_\_

Is your company a WBE firm? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes to either question, provide Federal Identification Number (FIN #) \_\_\_\_\_

D. Contract Number: \_\_\_\_\_

Date for Start of Construction: \_\_\_\_\_

E. Have you subcontracted with an MBE or WBE firm in this quarter? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide information on Part II and sign and date form.

If no, please sign and date form.

\_\_\_\_\_  
Recipient/Contractor

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

If an MBE/WBE subcontract is rescinded, please give a name of firm, date of rescission and amount of rescission.

\_\_\_\_\_  
Name of firm

\_\_\_\_\_  
Date of Rescission

\_\_\_\_\_  
Amount

## MBE/WBE PROCUREMENTS MADE DURING QUARTER

### PART II.

Procurement Made By		Business Enterprise		\$ Value of Procurement	Date of Award MM/DD/YY	Type of Product Or Service <sup>1</sup> (Enter Code)	Name/Address of MBE/WBE Contractor or Vendor

<sup>1</sup>Type of product or service codes:

1 – Agriculture  
2 – Mining  
3 – Construction  
4 – Manufacturing

5 – Transportation  
6 – Wholesale Trade  
7 – Retail Trade  
8 – Finance, Insurance, Real Estate

9 – Service  
a – Business Services  
b – Professional Services  
c – Repair Services  
d – Personal Services

10 – Other